

S-03529A-03-0000

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1 BEFORE THE ARIZONA CORPORATION COMMISSION

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3 IN THE MATTER OF:

) DOCKET NO.

) S-03529A-03-0000

4 WESLEY KARBAN WYATT and JANE DOE)

WYATT, husband and wife)

5 c/o Harry N. Stone)

3030 North Third Street, Ste. 200)

6 Phoenix, AZ 85012-3044)

) PREHEARING

) CONFERENCE

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12 At: Phoenix, Arizona

13 Date: May 22, 2003

14 Filed: JUN -6 2003

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

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By: MICHELE E. BALMER, RPR
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1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on regularly to be heard before
3 the Arizona Corporation Commission, 1200 West
4 Washington Street, Phoenix, Arizona, commencing at
5 9:05 a.m. on the 22nd day of May, 2003.

BEFORE: PHILIP J. DION, III, Administrative Law Judge

8 APPEARANCES:

9 KATHLEEN COUGHENOUR DeLaROSA, Attorney,
Securities Division, on behalf of the
10 Arizona Corporation Commission;

11 HARRY N. STONE, Attorney, on behalf of
Respondent.

13 MICHELE E. BALMER
14 Certified Court Reporter
Certificate No. 50489

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1 ALJ DION: Good morning everyone, and welcome
2 to the Arizona Corporation Commission. My name is Phil
3 Dion. I'm the presiding officer in this prehearing.
4 This is the matter of Wesley Karban Wyatt and Jane Doe
5 Wyatt, Docket No. S-03529A-03-0000.

6 This is the time set for a prehearing. We had
7 already had a prehearing previously on April 21st, but
8 there was some issues, including respondent's motion to
9 quash, that the parties indicated that they might be
10 able to resolve by themselves, and that the parties
11 needed some additional time in order to complete some
12 discovery in order to give a -- rather, to give a
13 realistic expectation of when a hearing could take
14 place in this matter.

15 I'll begin first by taking appearances. I'll
16 start with the Division.

17 MS. DeLaROSA: Kathleen Coughenour DeLaRosa,
18 Attorney for the Division.

19 MR. STONE: Harry Stone, attorney for the
20 respondent Wyatt.

21 ALJ DION: Good morning, everybody. We had a
22 brief conversation off the record, and essentially the
23 parties have indicated that they are still in the
24 process of negotiating a possible settlement. However,
25 if this case were to go to hearing, it appears that it

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1 will take approximately three days for a hearing.

2 Additionally, the parties tell me that they
3 have been able to -- it looks like they have been able
4 to resolve the issues that were brought up in
5 respondent's motion to quash. And so it appears that
6 that issue will be handled between the parties.

7 Ms. DeLaRosa, is that the sum and substance of
8 the conversation that you had?

9 MS. DeLaROSA: Yes, sir. It is.

10 ALJ DION: Do you agree with what I've said?

11 MS. DeLaROSA: I do.

12 ALJ DION: Anything to add?

13 MS. DeLaROSA: Nothing.

14 ALJ DION: Mr. Stone, same questions?

15 MR. STONE: Same answers. Nothing to add, and
16 I acknowledge the things that you said.

17 ALJ DION: Okay. In looking at our calendars,
18 it appears that a hearing on September 22nd is best for
19 everyone. And we'll make witness and exhibit lists,
20 the filing of those, due on the 2nd of September.

21 I'll go ahead and issue a procedural order.
22 We'll probably start the standard 10:00. It seems to
23 be the standard start time around here. I might amend
24 that to 9:00, something like that, after the initial
25 day. We can go ahead and evaluate, you know, start

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1 times.

2 And my preference is usually to at least start
3 by 9:00 and use the bulk of the day to get the hearing
4 to fruition as quickly as possible. Not to try to
5 short shrift the parties in their presentation of
6 evidence, but what I mean is I would like to use all
7 the hours in a specific day that we can so that we can
8 accomplish as much as possible.

9 But the procedural order will bear out the time
10 that we'll begin, but we'll start on the 22nd. That's
11 my anticipation, based on what the parties tell me,
12 that this case will go approximately three days.

13 In the interim, the parties will, as I
14 understand it, continue discovery and possibly
15 negotiate a settlement in this matter.

16 Anything further, Mr. Stone?

17 MR. STONE: I was wondering, should we set some
18 kind of a date to provide disclosures to each other
19 with regard to our anticipated witnesses and exhibits
20 and so forth?

21 ALJ DION: Yeah. I thought I had said that,
22 that being the 2nd. So witness lists, exhibit lists,
23 on the 2nd. As far as the exhibits themselves that you
24 guys are going to present, it certainly should be done
25 by that date. But you're free to do that in advance of

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1 the date as well in order to either -- you know, for
2 whatever various reasons, involving possibly settling
3 the matter.

4 If you have information that you would like --
5 or the Division has information that you would like to
6 see prior to that date, I don't have a problem with
7 that either. But by the 2nd, at least, I should have a
8 filing here in Docket Control telling me who you
9 anticipate to call and the evidence that you anticipate
10 to be provided.

11 On the date of the hearing, obviously, I would
12 also expect a copy of the exhibits that you plan to
13 admit into evidence for myself. But you can also
14 submit that information on the 2nd. I'll hold it in my
15 file until the hearing date. Whatever you prefer.

16 I mean, it's not something that I would review
17 until it was actually entered into evidence, as opposed
18 to a situation, say, where we have prefiled testimony
19 and things like that. That can be helpful. But in
20 securities cases I found it best ,because the attorneys
21 determine at that time what pieces of evidence they
22 would like me to consider.

23 So any other questions, Ms. DeLaRosa?

24 MS. DeLaROSA: None.

25 ALJ DION: Mr. Stone?

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1 MR. STONE: Yeah. I have one more thing, too.
2 I'm going to be submitting some discovery requests, and
3 I wondered if we can shorten the time period, say, to
4 15 days to respond. Is that workable?

5 MS. DeLaROSA: Typically there has been no
6 discovery in these actions, although I will certainly
7 consider your requests for what you want to see. But
8 typically the Administrative Rules do not provide for
9 discovery.

10 MR. STONE: Okay. Well --

11 MS. DeLaROSA: But I have already a list of
12 witnesses and exhibits prepared, and I can certainly
13 tell you. I'm not unhappy to give you information that
14 supports our case.

15 MR. STONE: Okay. Well, the Administrative
16 Rules say that they will follow the Rules of Civil
17 Procedure unless there's some kind of conflict. And I
18 don't find any conflict specifically saying that
19 there's no discovery.

20 So I'll make the request, and then we can
21 address them as they come in. If that's okay.

22 ALJ DION: Okay. That's fine. And then if you
23 reach an impasse, then go ahead and feel free to
24 contact me and we'll deal with it.

25 MR. STONE: Okay.

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1 ALJ DION: Anything else, Mr. Stone?

2 MR. STONE: That's it.

3 ALJ DION: Okay. With that, then we'll close
4 the record. The hearing on this date is set for
5 September 22nd, 2003. Witness and exhibit lists will
6 be due on the 2nd of September.

7 And we'll go ahead and conclude the hearing.
8 Thanks everybody. Have a good morning.

9 (The Prehearing Conference concluded at
10 9:15 a.m.)

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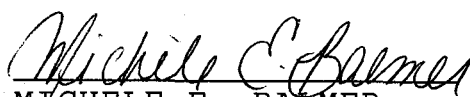
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1 STATE OF ARIZONA)
2) ss.
3 COUNTY OF MARICOPA)
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